

# Office Action Summary

**Application No.**

10/562,185

**Applicant(s)**

GAUTHIERON ET AL.

**Examiner**

RYAN D. DONLON

**Art Unit**

3695

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 15-18, 22-30, 32-43 and 66-68 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 15-18, 22-30, 32-43 and 66-68 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-840)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB-08)  
Paper No(s)/Mail Date \_\_\_\_
- 4) ☒ Interview Summary (PTO-413)  
Paper No(s)/Mail Date 7/12/11
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_

### **DETAILED ACTION**

1. Amendments to claims, drawings and specification filed on 15 September 2010 have been entered and are accepted. Claims 15-18, 22-30, 32-43 and 66-68 are currently pending and have been examined.

### ***Specification***

2. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required:

3. The specification lacks antecedent basis for "managing funds from a plurality of different investors" that have been allocated to a plurality of asset manager programs" (see 35 U.S.C. §112 1<sup>st</sup> rejection below).

4. Failures of appropriate apostrophe usage are found throughout the specification. For example, "Based on the review results and individual investors situation (i.e. investment profile and objective), it may be necessary to implement some actions to re-establish or modify the original allocation philosophy." Clearly this should be "investor's" not "investors".

5. Appropriate correction is required.

### ***Claim Rejections - 35 USC §112***

6. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the

art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

7. Claims 15-18, 22-30, 32-43 and 68 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

8. Specification is directed to:

The present invention attempts to overcome at least one of the problems of the prior art by providing a method of investing funds including the allocation of investment funds to asset manager programs wherein the distribution of total funds available for investment to a plurality of asset manager programs is effected by performing the method steps of performing a plurality of intermediate allocations, each intermediate allocation according with a pre-defined rule established to apportion funds according to an investor's preferred distribution of investment funds to particular assets or classes of assets said allocations forming a network of allocations with intermediate allocations receiving an apportionment of funds from a superior allocation, and apportions funds to a subordinate allocation said method- step of allocating funds to subordinate allocation being repeated until all available funds are allocated to a most subordinate allocation each most subordinate allocation representing an asset manager program. (See Page 3 lines 5-18)

9. From the above cited portion, it is clear the specification is directed to managing (or investing) "an investor's" funds rather than a plurality of different investors. It is the rare occurrence when the specification discusses more than one investor, for example "Of the total available funds for investment, a pre-defined rule is established at the [Individually Managed Account] level setting out the investors preferred customization of distribution of their funds" (see page 9 lines 13-15). However, it is clear from this sentence that "investors" should be possessive (e.g. either "investor's or investors'"), yet the appropriate apostrophe is missing. As a result, the number of the investor(s) is

called into question. It appears this question is answered below this cited portion when the Specification states "The application of this predefined rule allows the investor to customize the allocation of their investment funds with respect to primary asset classes" (see page 9 lines 20-22).

10. Similar failures of appropriate apostrophe usage are found throughout the specification. For example, "Based on the review results and individual investors situation (i.e. investment profile and objective), it may be necessary to implement some actions to re-establish or modify the original allocation philosophy." Here one can see that the word "investors" should be possessive since it is the situation of the individual investor which is of concern. Therefore, one can clearly see that the system is directed at managing (or investing) **individual investor's** funds rather than funds from a plurality of different investors.

11. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

12. Claims 15-18, 22-30, 32-43, 66-68 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

13. Claims 15-18 and 66 are rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential structural cooperative relationships of elements, such omission amounting to a gap between the necessary structural connections. See

MPEP § 2172.01. The omitted structural cooperative relationships are between the receiver, the at least one processor and the data input means.

14. Claim 15 is rejected because it is unclear if the "receiver" is a human element (e.g. an operator) or a technology component (e.g. a data input means) the Specification appears to support both interpretations (see page 6 lines 9-11).

15. Claim 26 is rejected because the claim recites "[...] performing the method step [...]" however this lacks antecedent basis in the claim.

16. Claims 26, 30 and 40 are rejected because it is unclear if the "[...] repeating the step of performing intermediate allocations [...]" has antecedent basis as the closest antecedent basis is "performing a plurality of intermediate allocations". It is unclear if this "repeating" is one of the "plurality" or if the "repeating" is one of the "plurality" or if the repeating is simply at least one "allocation" in addition to the plurality. For the sake of compact prosecution, the Examiner will interpret this as one of the plurality.

17. Claim 26 is also rejected because it is unclear what are the metes and bounds of the claims with respect to the method steps. For example, the claim recites "the method step" and "repeating the step", however there are additional gerunds like "distributing", "representing" and "administering" which are not identified as being "method steps". It is unclear which are method steps and which are merely characterizing the environment in which the method is performed. For example, confusion arises when determining the metes and bounds of "effected by", such that it is unclear if the "effected by" should be

interpreted as —wherein distributing is entirely accomplished by— or alternatively —wherein distributing also includes—.

18. Claim 30 is similarly rejected as claim 26 (immediately above).

19. Claims 15, 22, 26, 30, and 40 are rejected because it is unclear what are the metes and bounds of “administering [(or administer)] superior allocations”. Merriam-Webster’s Dictionary defines Administer as follows.

**Administer**

*Transitive Verb*

1: to manage or supervise the execution, use, or conduct of <administer a trust fund>

2 a : to mete out : dispense <administer punishment>

b : to give ritually <administer the last rites> c : to give remedially <administer a dose of medicine>

*Intransitive Verb*

1: to perform the office of administrator

2: to furnish a benefit : minister <administer to an ailing friend>

3: to manage affairs

20. It is unclear if “actively administering superior allocations” involves actual “allocating” or merely supervising. Specifically it is unclear what steps are involved in “administering” an “allocation”, clarification is necessary in order to determine if proper antecedent basis for this limitation exists in the Specification.

21. Dependant claims not specifically address are rejected by virtue of depending from rejected claims.

***Claim Rejections - 35 USC § 101***

22. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

23. Claims 15-18 and 66 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

24. Claim 15 appears to incorporate human subject into the system. The "receiver" appears to be directed at the "professional asset managers" (see page 3 lines 19-22). As claims directed towards human beings are not patentable, the claims are rejected.

25. Claims 22-25 are rejected under 35 U.S.C. 101 because the claimed invention is directed to ineligible subject matter.

26. The broadest reasonable interpretation of the computer readable medium includes non-tangible transitory signals which are not a judicially recognized class of invention. The Examiner suggests amending the claims to recite "A tangible computer readable medium, comprising computer executable code... " or the like.

27. Based upon consideration of all of the relevant factors with respect to the claim as a whole, claim(s) 26-30, 32-39 and 67 are held to claim an abstract idea, and is therefore rejected as ineligible subject matter under 35 U.S.C. § 101.

28. As per claims 26-29 and 67, these claims include "performing [...] using at least one processor", However from the specification (page 16 lines 20-24) a reasonable

interpretation is that this is a human performed method step, therefore rationale for this finding of ineligible subject matter is:

- There is no recitation of a transformation (either express or inherent)
- There is insufficient recitation of a machine as the involvement of machine with the steps is merely nominally, insignificantly, or tangentially related to the performance of the steps, or merely recites a field in which the method is intended to be applied.
- Machine is generically recited such that it covers any machine capable of performing the claimed step(s).
- Machine is merely an object on which the method operates (e.g. "using at least one processor" rather than "by at least one processor").
- The claim is not directed to an application of a law of nature.

29. As per claims 30 and 32-39, these claims include "performing [...] using at least one processor", clearly from the specification (page 16 lines 20-24) an interpretation is that this is a human performed method step. Additionally this claim includes "at least one processor actively administers" which is considered insufficient recitation because A) this appears to be a characterization of the environment in which the method operates; and B) this appears to be mere data gathering as the Specification supports an interpretation of "administering" to be mere "presenting customization suggestions" (*sic*; see page 16 lines 20-24). and the Therefore rationale for this finding of ineligible subject matter is:

- There is no recitation of a transformation (either express or inherent)



- There is insufficient recitation of a machine as the involvement of machine with the steps is merely nominally, insignificantly, or tangentially related to the performance of the steps, or merely recites a field in which the method is intended to be applied.
- Machine is generically recited such that it covers any machine capable of performing the claimed step(s).
- Machine is merely an object on which the method operates (e.g. "using at least one processor" rather than "by at least one processor").
- The claim is not directed to an application of a law of nature.

***Claim Rejections - 35 USC § 102***

30. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

31. Claims 15-18, 22-26, 28-30, 32-33, 35-43, 66, 68 are rejected under 35 U.S.C. 102(b) as being anticipated by Ray et al., Pat No. 6,018,722 (hereinafter Ray), patented on January 25, 2000.

32. *Claim 15 Construction Notes:* The origin of the funds (i.e. "from multiple different investors") and the human subject matter provide no structural limitations to the system as claimed, and therefore provide little patentable weight. For the purposes of compact

prosecution Examiner provides citations to the relevant portions of the prior art for these elements.

33. Regarding the portion "the at least one processor actively administering superior allocations for the plurality of investors at lower cost as compared with subordinate allocations" appears to be the desired result of the system, as the Specification supports this interpretation (see page 4 lines 3-8), rather than an interpretation wherein the processor directly determines the cost. A similar interpretation is applied for the method claims below.

34. Additionally, it would be preferable that the Applicant's claim language recite "the at least one processor **for determining**" (emphasis added) rather than "the at least one processor determining".

35. As per **claim 15**:

Ray discloses funds investment system for managing funds from a plurality of different investors that have been allocated to a plurality of asset manager programs through a plurality of intermediate allocations of the funds the most subordinate allocations representing the allocation of funds to an asset manager program with all superior intermediate allocations effected external to any asset manager program, with each intermediate allocation of funds according to a predefined rule, the system comprising:

a receiver for receiving data relating to the value of the invested funds held by the plurality of asset manager programs (mutual funds) (see at least column 2 lines 4-47

and 6 lines 13-37);

at least one processor for determining the value of intermediate allocations that represent the distribution of invested funds for each investor (see column 2 lines 10-14), to individual asset manager programs according to the value data received (see at least column 6 lines 3 through column 7 line 57);

the at least one processor comparison means for comparing the determined intermediate allocations with the predefined rules (allocation model) for same (see at least column 5 lines 33-48, column 8 lines 63-67 and column 9 lines 1-8);

and the at least one processor determining a new allocation of funds to asset managers in accordance with the predefined rules for intermediate allocations in the event that a variance greater than a predetermined amount exists between the determined intermediate allocation and the predefined rules for same wherein the new allocation of funds is achieved by (see at least column 8 lines 3-14, 54-67 column 9 lines 1-8) buying and selling investment instruments effected by individual asset managers of one or more of the plurality of asset manager programs, the at least one processor actively administering superior allocations for the plurality of investors at lower cost as compared with subordinate allocations for the plurality (see at least column 7 lines 4-21, the Examiner notes "individual asset managers" are interpreted to be human subject matter thus separate and distinct from the system and further not a limiting structure element of the claimed system).

36. As per **claim 16**:

A funds investment system according to claim 15 wherein the determined new allocation of funds distribution to asset managers is provided to a user by a data output means thus reporting the new distribution required to maintain the integrity of the predefined intermediate allocation rules (see at least claim 5 and column 9 lines 29-43).

37. As per **claim 17**:

A funds investment system according to claim 15 wherein a data input means is operated by the user to request a calculation to determine the options that are available to effect the new allocation of funds (see at least the "ÆExpert RIA" system in column 9 lines 29-43).

38. As per **claim 18**:

A funds investment system according to claim 17 wherein the selection of an option and effecting the transfer of funds between asset managers to accord with the new distribution is automated (see at least column 9 lines 44- 67 and column 10 lines 1- 12 wherein the selection and transfer of funds is automated using a computer).

39. As per **claim 66**:

A funds investment system according to claim 15 wherein the intermediate allocations are grouped to define categories of allocations said categories being individually managed by a computing means in operable communication with the at

least one processor such that the at least one processor receives data relating to the amount of funds allocated to each intermediate allocation and/or each allocation category (see at least column 8 lines 3-14 and column 5 lines 33-48, column 8 lines 63-67 and column 9 lines 1-8).

40. *Claim 22 Construction Notes:* The origin of the funds (i.e. "from multiple different investors") and the human subject matter provide little patentable weight to the computer program as claimed, and therefore are not limiting to the claims. For the purposes of compact prosecution Examiner provides citations to the relevant portions of the prior art for these elements.

41. Regarding the portion "execution of the code by the at least one processor actively administering superior allocations for the plurality of investors at lower cost as compared with subordinate allocations for the plurality of investors" appears to be the desired result of the system, as the Specification supports this interpretation (see page 4 lines 3-8), rather than an interpretation wherein the code directly determines the cost.

42. As per **claim 22:**

Ray discloses a computer program for execution on at least one processor embodied on a computer readable medium for managing funds from a plurality of different investors that have been allocated to a plurality of asset manager programs through a plurality of intermediate allocations of the funds, the most subordinate allocations representing the allocation of funds to an asset manager program with all superior intermediate allocations effected external to any asset manager program, and

where each intermediate allocation accords with a predefined rule wherein said computer program includes computer instruction code for executing tasks including:

code for receiving data relating to the value of the invested funds from multiple different investors held by the plurality of asset manager programs (see at least column 2 lines 4-47 and 6 lines 13-37 with special attention paid to column 2 lines 10-14);

code for receiving data relating to the value of the invested funds held by the plurality of asset manager programs (mutual funds) (see at least column 2 lines 4-47 and 6 lines 13-37);

code for determining the intermediate allocations representing the distribution of pooled investment funds from multiple different investors to individual asset manager programs according to the value data received (see at least column 6 lines 3 through column 7 line 57);;

code for comparing the determined intermediate allocations with the pre-defined rules (allocation model) for same and determining whether a variance greater than a predetermined amount exists between the determined intermediate allocation and the pre-defined rules for same (see at least column 5 lines 33-48, column 8 lines 3-67, column 9 lines 1-8 and claim 5);

and code for calculating a new allocation of funds to asset managers in accordance with the predefined rules for intermediate allocations (see at least claim 5 and column 9 lines 29-43) wherein the new allocation of funds is achieved by buying and selling investment instruments effected by individual asset managers of one or more of the plurality of asset manager programs (see at least column 7 lines 4-21),

execution of the code by the at least one processor actively administering superior allocations for the plurality of investors at lower cost as compared with subordinate allocations for the plurality of investors.

43. As per **claim 23:**

A computer program according to claim 22 wherein the computer program further includes computer instruction code for reporting the calculated new allocation of funds (see at least claim 5 and column 9 lines 29-43).

44. As per **claim 24:**

A computer program according to claim 23 wherein the computer program further includes computer instruction code for receiving an instruction from a user to effect a transfer of funds to each most subordinate allocation to accord with the calculated new allocation (see at least the "Expert RIA" system in column 9 lines 29-43).

45. As per **claim 25:**

A computer program according to claim 23 wherein the computer program further includes computer instruction code for transferring funds to accord with the new allocation (this claim introduces no substantial limitation over that of claim 24 and is therefore rejected under a similar rationale).

46. As per **claim 26**:

A method of investing funds from a plurality of different investors in a data communications network including communication devices enabling communication between a user and a funds investment system, the funds being invested with asset manager programs by distributing funds from the plurality of different investors (see at least column 2 lines 10-14) available for investment to a plurality of asset manager programs ("mutual funds") (see at least column 2 lines 40-48) said distribution effected by performing a plurality of intermediate allocations using at least one processor, the most subordinate allocations representing the allocation of funds to an asset manager program with all superior intermediate allocations effected external to any asset manager program, each intermediate allocation according with predefined rules (allocation model) supplied to the system by the user over the communications network (see at least column 4 lines 66-67 and column 5 lines 1-19) and repeating the step of performing intermediate allocations until all available funds (allocating an account) from the plurality of different investors are allocated through the intermediate allocations of the funds to the asset manager programs (see at least column 5 lines 33-48, column 8 lines 3-67, column 9 lines 1-8, claims 1 and 5 and column 8 lines 3-14) wherein the allocation of funds includes actively administering superior allocations for the plurality of investors at lower cost as compared with subordinate allocations for the plurality of investors.



47. As per **claim 28**:

A method according to claim 26 wherein the predefined rules for intermediate allocations are established to apportion funds according to an investor's preferred distribution (allocation model) of investment funds to particular assets or classes of assets (see at least column 4 lines 66-67 and column 5 lines 1-19).

48. As per **claim 29**:

A method according to claim 26 wherein the intermediate allocations (mutual funds) form a network of allocations and an intermediate allocation receives an apportionment of funds from a superior allocation (an account) and apportions funds to a subordinate allocation (see at least column 2 lines 40-48, column 8 lines 3-14).

49. As per **claim 30**:

A method of investing funds from a plurality of different investors in a data communications network including communications devices enabling communications between a user and a funds investment system by distributing total funds available for investment to a plurality of asset manager programs through tiered allocations of the funds, the most subordinate allocations representing the allocation of funds to an asset manager program with all superior intermediate allocations effected external to any asset manager program, said distribution effected by performing a plurality of intermediate allocations using at least one processor each intermediate allocation according with predefined rules supplied to the system by the user over

communications network and repeating the step of performing intermediate allocations until all available funds are allocated with asset manager programs:

wherein the at least one processor actively administers superior allocation for the plurality of investor at lower cost as compared with subordinate allocations for the plurality of investors; and

wherein the method includes the step of receiving from asset managers, to whom the funds from multiple different investors (see column 2 lines 10-14) have been allocated, a valuation of the invested funds (see column 2 lines 10-14 where multiple different investors participate and column see column 5 lines 49-58 wherein in an investor's pooled funds are valued) in each of the asset manager programs and determining a value at each superior intermediate allocation, the value being determined from valuations at subordinate allocations (see at least "account value" column 5 lines 45-58; column 6 lines 3 through column 7 line 57; column 8 lines 3-14 and claim 1 which shows gathering a valuation of the invested funds (market value) of the plurality of securities).

50. As per **claim 32**:

A method according to claim 30 wherein the valuation of intermediate allocations occurs periodically (see at least column 4 lines 46-55).

51. As per **claim 33**:

A method according to claim 30 wherein the valuation of intermediate allocations

occurs as a result of a predefined trigger (daily) (this claim introduces no substantial limitation over that of claim 32 and is therefore rejected under a similar rationale).

52. As per **claim 35**:

A method according to claim 30 wherein the valuations of the intermediate allocations may be compared with the predefined allocation rules to determine the extent of variance with respect to those rules (see at least column 8 lines 3-14 and claim 5).

53. As per **claim 36**:

A method according to claim 30 wherein the method includes rules relating to the allowable variance of allocation valuations as compared with the predefined rules regarding intermediate allocations and in the event that the allowable variance is exceeded, a warning (buy or sell recommendation) is provided (see at least column 8 lines 3-14, 54-67 column 9 lines 1-8 and claim 5).

54. As per **claim 37**:

A method according to claim 36 wherein the allowable variance is exceeded and the method includes the generation of recommended actions for the distribution of investment funds in order to bring the distribution of funds into agreement with the predefined allocation rules (see at least column 8 lines 3-14, 54-67 column 9 lines 1-8 and

claim 5.

55. As per **claim 38**:

A method according to claim 37 wherein the recommended actions include the provision of recommended buy and sell orders with respect to particular securities (see at least column 8 lines 3-14, 54-67 column 9 lines 1-8).

56. As per **claim 39**:

A method according to either claim 37 wherein the method includes the step of providing a simulated valuation of the intermediate allocations and the funds invested with individual asset manager programs that would most likely result from executing the recommended actions (see at least figure 3 and column 3 description of "FIG 3").

57. As per **claim 40**:

A method of managing invested funds from a plurality of different investors in a data communications network including communication devices enabling communication between a user and an investment funds system, the funds having been allocated to a plurality of asset manager programs through tiered intermediate allocations of the funds the most subordinate allocations representing the allocation of funds to an asset manager program with all superior intermediate allocations effected external to any asset manager program, with each intermediate allocation according with a predefined rule communicated to the system by the user, the method including:

obtaining data relating to the value of pooled investment funds from multiple different investors allocated to the plurality of asset manager programs;

calculating using at least one processor the intermediate allocations representing the distribution of funds to individual asset manager programs according to the value data obtained;

comparing using at least one processor the calculated intermediate allocations with the pre-defined rules for same;

and in the event that a predefined variance between the calculated intermediate allocation and the predefined rule for same is exceeded, calculating a new allocation of funds to asset managers in accordance with the pre-defined rules for intermediate allocations;

wherein the new allocation of funds is achieved by buying and selling investment instruments effected by individual asset managers of one or more of the plurality of asset manager programs; and

wherein the at least one processor actively administers superior allocations for the plurality of investors at lower cost as compared with subordinate allocations for the plurality of investors.

58. This claim is rejected under the same rationale as claim 15.

59. As per **claim 41**:

A method according to claim 40 wherein the requirement to perform a new calculation of funds distribution to asset managers is communicated to the user as

warning (buy or sell recommendation) that action is required to maintain the integrity of the pre-defined intermediate allocation rules (see at least column 8 lines 3-14, 54-67 column 9 lines 1-8 and claim 5).

60. As per **claim 42**:

A method according to claim 40 wherein the funds investment system determines the options available (buy or sell recommendations) to effect the new distribution of funds and communicates same to the user for consideration (see at least column 8 lines 3-14, 54-67 column 9 lines 1-8 and claim 5).

61. As per **claim 68**:

Ray discloses a method according to claim 40 wherein intermediate allocations are grouped to define categories of allocations, the method including the step of reporting the amount of funds allocated to each intermediate allocation and/or allocation category thus enabling the allocation categories to be individually managed. (For the purposes of prosecution the phrase "thus enabling the allocation categories to be individually managed" does not further limit the scope of the claim, since this phrase does not positively recite a limitation, but rather the intended consequence of implementing the claim. See at least column 8 lines 3-14 and lines 63-67; column 9 lines 1-8; and column 5 lines 33-48, wherein it is disclosed that the allocations are used to develop reports).

62. As per **claim 43**:

A method according to claim 42 wherein the user selects at least one of the available options and communicates the selection to the funds investment system, said funds investment system upon receiving said selection effecting transfer of funds to effect the new distribution of funds (see at least column 9 lines 66-67 and column 10 lines 1-12).

***Claim Rejections - 35 USC § 103***

63. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

64. Claim 27, 34 and 67 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ray as applied to claim 26 above.

65. As per **claim 27**:

Ray does not disclose a method according to claim 26 wherein the communication devices used by the user include any one or more of the following:

- a laptop personal computer;
- a notebook personal computer;
- a wireless laptop personal computer;
- a wireless notebook personal computer;

a cell phone;

or a cell phone having connection facilities to the data communications network.

However Ray does disclose the use of a personal computer (see at least column 9 lines 44-65). The use of a laptop personal computer is a well known improvement over the use of a desktop computer and applying this improvement would have been well within the means of one of ordinary skill at the time of the invention. Therefore it would have been obvious to improve the system for investing of Ray, by the simple substitution of the use of a personal computer for the use of a laptop to obtain predictable results. Thus, the simple substitution of one known element for another producing a predictable result renders the claim obvious.

66. As per **claim 67**:

A computer program embodied on a computer readable medium according to claim 27 wherein intermediate allocations are grouped to define categories of allocations, the computer program including code for reporting the amount of funds allocated to each intermediate allocation and/or allocation category thus enabling the allocation categories to be individually managed.

67. As per **claim 34**:

Ray does not teach a method according to claim 33 wherein the predefined trigger is a value of funds with an asset manager program exceeding a predetermined



amount. However, Ray does teach valuation triggers (see the rejection to claim 33 above)

Further it would have been obvious to the ordinary practitioner at the time of the invention to perform a valuation of the holdings of a fund as the result of one or more of the fund's holdings significantly changing in value. For example, many asset managers invest a fund's financial holdings using strategies consisting of a balancing a fund's holdings across various asset classes (e.g. energy, health care, commodities, etc). Each asset class is typically assigned percentage of the total value of the funds holdings as a target (e.g. 33% energy, 33% health care, 34% commodities). The fund will then invest in various assets in an asset class such that the total value of the various assets in an asset class meet the target percentage of the total value of the entire fund, thus the implementing the fund's strategy. When the value of a particular asset in the fund's holdings grows (or falls) suddenly (say because of a merger or an new business venture), a portfolio manager will perform a valuation of the fund's holdings to determine the change in the value of the particular asset in question places the funds target balance off the target the strategy.

It would have been obvious to one of ordinary skill in the art to include in the method of valuing a fund as the result of a trigger of Ray, the well known method of triggering a valuation as the result of an asset significantly changing in value because this would have allowed for asset managers and investor alike to be notified of the imbalances in their portfolio. Further the claimed invention is merely a combination of old elements, and in the combination, each element merely would have performed the

same function as is did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

***Response to Arguments***

68. With respect to Applicant's arguments regarding 35 U.S.C. §112 2<sup>nd</sup>, in light of Applicant's amendments, this rejection has been withdrawn.

69. With respect to Applicant's arguments regarding 35 U.S.C. §101, the Examiner has fully considered the arguments and respectfully disagrees.

70. Regarding claims 26-30 and 31-39, the Applicant argues "the communications devices... are essential integers for performance of the method". As the 35 U.S.C. §112 2<sup>nd</sup> paragraph rejection The Examiner respectfully disagrees, the method **as claimed** would have been performed the same regardless of the communications devices. The language reciting the communication devices merely describes the environment in which the method steps are performed. However these elements do not provide substantive limitations on the scope of the method steps.

71. With respect to Applicant's arguments regarding 35 U.S.C. §102 and §103, the Examiner has fully considered the arguments and respectfully disagrees.

72. Regarding the language (or similar language), "wherein the at least one processor actively administers superior allocations for the plurality of investors at lower cost as compared with subordinate allocations for the plurality of investors.", this

language clearly describes the desired result of the systems (or methods or articles of manufacture).

### ***Conclusion***

73. References which are cited but not relied upon teaching sub-allocations (e.g. network of allocations) of investments are cited on the PTO-892 form.

74. Any inquiry concerning this communication or earlier communications from the examiner should be directed to RYAN D. DONLON whose telephone number is (571)270-3602. The examiner can normally be reached on Monday through Friday 9:00am to 5:00pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Kyle can be reached on (571) 272-6746. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/RYAN D DONLON/  
Examiner, Art Unit 3695  
July 14, 2011